U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-M-R-I-N- CORP.

DATE: SEPT. 25, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical records and healthcare company, seeks to employ the Beneficiary as a medical records manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the grounds that (1) the Petitioner did not establish that the Beneficiary had at least five years of experience in the job offered, as required to meet the minimum experience requirement of the labor certification and to qualify for advanced degree professional classification, and (2) the Petitioner did not establish its ability to pay the proffered wages of the instant Beneficiary and the beneficiaries of all its other employment-based immigrant petitions (I-140 beneficiaries) from the priority date of this petition onward. On appeal the Petitioner asserts that the evidence of record establishes that the Beneficiary has the requisite qualifying experience as well as the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. Beneficiary's Experience

To be eligible for classification as an advanced degree professional, a beneficiary must have either (1) a U.S. master's degree or a foreign equivalent degree, or (2) a U.S. baccalaureate degree or a foreign equivalent degree plus five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) To be eligible for the requested classification the beneficiary must also meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The Petitioner claims that the Beneficiary in this case is eligible for advanced degree professional classification based on the combination of a bachelor's degree and five years of qualifying experience. The labor certification requires a bachelor's degree in nursing, medical records administration, or a related field, and five years of experience as a medical records manager. The record establishes that the Beneficiary earned a bachelor's degree in nursing in the Philippines in 1989, and that this degree is equivalent to a U.S. baccalaureate degree in nursing. At issue is whether or not the Beneficiary has the five years of experience required for advanced degree professional classification and to meet the minimum requirements of the labor certification.

According to the labor certification, the Beneficiary exceeded the five-year experience requirement before the priority date of September 6, 2012, by virtue of his employment as a medical records manager at [redacted] in [redacted] Philippines, from June 2, 2001, to July 5, 2006, followed by another job as medical records manager with [redacted] in [redacted] New York, which started in February 2010 and was ongoing as of the priority date. With its initial evidence the Petitioner submitted a photocopied letter bearing the signature of the director of [redacted] and stating that the Beneficiary was employed as a medical records manager from June 2, 2001, to July 5, 2006. No evidence was submitted of the Beneficiary's employment with [redacted]

In a request for evidence (RFE) the Director noted that according to USCIS records the Beneficiary was in the United States from April 12, 2006, to March 24, 2007, which conflicted with the Beneficiary's claim to have worked for [redacted] until July 5, 2006. The Petitioner was requested to explain this discrepancy and submit official employment and tax records, or other independent objective evidence, documenting the Beneficiary's employment with [redacted] and [redacted] year by year. In response to the RFE the Petitioner submitted a letter from the Beneficiary stating that he submitted his resignation to [redacted] in March 2006, prior to his arrival in the United States in April 2006. The Petitioner did not submit any of the requested employment and tax records, or other independent objective evidence, documenting the Beneficiary's employment with [redacted] or [redacted]

[1] The priority date of the petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is September 6, 2012.

In denying the petition the Director found that the Petitioner had not resolved the evidentiary discrepancies identified in the RFE. The Director found that the Beneficiary's letter stating that he resigned from in March 2006 was inconsistent with the labor certification in which he stated that he worked at until July 5, 2006, as well as with the employment verification letter from which also stated that the Beneficiary was employed until July 5, 2006. The Director concluded that the letter from appeared to be fraudulent and that the Petitioner did not establish that the Beneficiary had the minimum experience required to meet the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal the Petitioner asserts that the discrepancy in the Beneficiary's work record at is negligible with regard to the five-year minimum experience requirement because the difference between the employment period asserted in the labor certification and the letter and the employment period acknowledged by the Beneficiary in his letter responding to the RFE is at most four months. According to the Petitioner, even if the Beneficiary was employed by for a little less than five years, combining this employment with his subsequent employment with raises the Beneficiary's qualifying experience to well above five years by the priority date of September 6, 2012. Furthermore, the Petitioner suggests that the discrepancy in the letter from the director of regarding the Beneficiary's employment end date could be considered a typographical error rather than a fraudulent claim.

The Petitioner's assertions are unpersuasive. The Beneficiary's letter stating that he resigned from in March 2006, prior to his travel to the United States in April 2006, does not explain why the Beneficiary declared in the labor certification that he worked for until July 2006, or why the letter from also states that he was employed until July 2006. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.* Here, the Petitioner has not submitted a supplemental letter from the director of claiming that he was mistaken about the end date of the Beneficiary's employment. Nor has the Petitioner submitted any official employment records, tax records, or other independent objective evidence, as requested by the Director in the RFE, to demonstrate that the Beneficiary was actually employed by during the years 2001-2006. The unresolved discrepancies raise doubt as to whether the Beneficiary was employed at for any period of time.

Even if the Petitioner established the veracity of the Beneficiary's latest claim that he was employed by from June 2001 to March 2006, that time period is less than five years. As such, it was less than required to meet the minimum requirement of the labor certification and to qualify the Beneficiary for classification as an advanced degree professional. The Petitioner's argument that the Beneficiary's combined employment at and exceeds five years has no evidentiary support in the record since the Petitioner has submitted no evidence of the Beneficiary's alleged employment with , despite the Director's specific request for documentation in the RFE and the opportunity to submit such documentation on appeal.

For the reasons discussed above, we find that the Petitioner has not established that the Beneficiary had at least five years of qualifying experience by the priority date of September 6, 2012, as required to meet the minimum requirement of the labor certification and the regulatory requirement for classification as an advanced degree professional.

B. Petitioner's Ability to Pay the Proffered Wage

To be eligible for an employment-based immigration classification, a petitioner must establish its ability to pay the proffered wage as stated on the labor certification from the priority date of the petition onward. *See* 8 C.F.R. § 204.5(g)(2). In this case, the proffered wage of the job offered is $95,014 per year and the priority date is September 6, 2012.

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the instant beneficiary was employed and paid by the petitioner during the period following the priority date. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), is considered proof of the petitioner's ability to pay the proffered wage of that beneficiary. In this case, however, there is no evidence that the instant Beneficiary has been employed by the Petitioner at any time since the priority date. Therefore, the Petitioner has not established its ability to pay the proffered wage based on wages paid to the Beneficiary.

If a petitioner does not establish that it has paid the beneficiary an amount equal to or above the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures recorded on the petitioner's federal income tax return(s), annual report(s), or audited financial statements(s). If either of these figures, net income or net current assets, equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the beneficiary in a given year, the petitioner would be considered able to pay the proffered wage during that year. However, when a petitioner has filed other I-140 petitions, the Petitioner must establish that its job offer is realistic not only for the instant Beneficiary, but also for its other I-140 beneficiaries. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). In this case, therefore, the Petitioner must demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and every other I-140 beneficiary from this petition's priority date until the other I-140 beneficiaries obtain lawful permanent resident status. *See Patel v. Johnson*, 2 F.Supp. 3d 108, 124 (D.Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries).[2] The Petitioner must

[2] The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered after the other beneficiary obtains lawful permanent residence; or if an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or before the priority date of the I-140 petition filed on behalf of the other beneficiary.

establish that its net income or net current assets in a given year are sufficient to pay the proffered wages of the instant Beneficiary and all of its other I-140 beneficiaries, or the difference between their total proffered wages and the wages paid to them.

In an RFE the Director requested the Petitioner to submit copies of its federal income tax returns, annual reports, or audited financial statements for each of the years 2012-2016. In addition, since USCIS records indicated that the Petitioner had filed multiple petitions for other I-140 beneficiaries, the Director requested a list of all the I-140 petitions filed by the Petitioner during the years 2012-2017, the proffered wage and priority date of each beneficiary, evidence of any wages paid to these beneficiaries, the status of each petition (pending, approved, or denied), and whether any beneficiary had obtained lawful permanent resident (LPR) status. In response to the RFE the Petitioner submitted copies of its federal income tax returns (Form 1120, U.S. Corporation Income Tax Return) for the years 2013-2016, but not for 2012. The Petitioner did not submit any information about its other I-140 beneficiaries. Thus, the Petitioner did not provide all of the information requested by the Director in the RFE.

In denying the petition the Director found that the net income and/or net current assets recorded on the Petitioner's federal income tax returns exceeded the proffered wage of the instant Beneficiary in each of the years 2013-2016. Without a tax return for 2012, however, the record did not demonstrate that the Petitioner's net income or net current assets equaled or exceeded the proffered wage of the instant Beneficiary every year since the priority date. Moreover, as no information was provided about its proffered wage obligations to any of its other I-140 beneficiaries, the Petitioner did not establish that its net income or net current assets were sufficient to pay the proffered wages of all its I-140 beneficiaries at any time from the priority date of September 6, 2012, onward.

On appeal the Petitioner asserts that its financial year for tax purposes runs from July 1 to June 30, and that its 2013 Form 1120 covers the time period of July 1, 2012, to June 30, 2013. According to the Petitioner, therefore, its 2013 federal income tax return (in particular, net current assets) establishes its ability to pay the proffered wage from the priority date of September 6, 2012, up to June 30, 2013. The Petitioner is mistaken about the time period covered by its 2013 tax return. The Form 1120 for 2013 states at the top of page 1 that it applies to the tax year beginning July 1, 2013, and ending June 30, 2014. The subsequent returns for 2014-2016 similarly cover the tax year beginning in the middle of that calendar year and ending in the middle of the next calendar year. Thus, the Petitioner's tax returns show that its net income and/or net current assets equaled or exceeded the Beneficiary's proffered wage during the time period of July 1, 2013, to June 30, 2017, but not from the priority date of September 6, 2012, to June 30, 2013.

Moreover, the Petitioner still has not submitted any information about its other I-140 beneficiaries. Therefore, the Petitioner has not revealed its total proffered wage obligation and has not established that its net income or net current assets in any of the tax years 2013-2016 were sufficient to cover that obligation.

The only new evidence submitted on appeal is an audited financial statement prepared by a certified public accountant, [redacted][3] for the nine-month time period ending on March 31, 2016. Absent any evidence of the Petitioner's total proffered wage obligation to its I-140 beneficiaries, however, the audited financial statement for a nine-month period in 2015-2016 has little probative value with respect to the Petitioner's ability to pay the proffered wages of all its I-140 beneficiaries from the priority date of September 6, 2012, onward.

USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of its net income and net current assets. We may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the petitioner's reputation within its industry, the overall number of employees, whether the beneficiary is replacing a former employee or an outsourced service, the amount of compensation paid to officers, the occurrence of any uncharacteristic business expenditures or losses, and any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

The Petitioner indicates that it was incorporated in 2001 and had 10 employees at the time the petition was filed in April 2013. The federal income tax returns in the record show that the Petitioner's gross receipts rose from $1,631,710 in 2013, to $4,971,874 in 2014, to $7,264,190 in 2015, to $9,520,133 in 2016, and that its net income and net current assets also grew in each of those years (with the exception of a drop in net income from 2015 to 2016). While these figures appear to show a pattern of growth in recent years, the lack of any data from the Petitioner about its other I-140 beneficiaries, their employment status, and the amount of its proffered wage obligations to those beneficiaries makes it impossible for us to determine whether the Petitioner has had the ability to pay the proffered wages of all its I-140 beneficiaries from the priority date of September 6, 2012, up to the present.

Based on the evidence of record, therefore, we find that the Petitioner has not established its continuing ability to pay its proffered wage obligations from the priority date of September 6, 2012, onward.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary had the requisite experience to qualify for classification as an advanced degree professional and meet the requirements of the labor certification by the priority date, and because the Petitioner has not established its ability to pay the proffered wages of the instant Beneficiary and all of its other I-140 beneficiaries from the priority date of this petition up to the present.

[3] The record indicates that [redacted] is the father of the Petitioner's president and serves, or served, as the Petitioner's chief financial officer.

ORDER: The appeal is dismissed.

Cite as *Matter of U-M-R-I-N- Corp.*, ID# 1685627 (AAO Sept. 25, 2018)